

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 680 of 1997

in

SPECIAL CIVIL APPLICATION NO 3474 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUBHASHBHAI PANNALAL SHAH

Versus

KAVANT GRAM PANCHAYAT

Appearance:

MRS DT SHAH for Petitioner

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

date of decision: 02/07/97

ORAL JUDGEMENT (Per:Pandit.J)

Subhashbhai Pannalal Shah the original petitioner

in Special Civil Application No. 3474 of 1997 has preferred this Letters Patent Appeal against an order passed by the learned single Judge on 2.5.97 by which he rejected the petition of the petitioner.

2. The petitioner was working as Deputy Sarpanch/Up sarpanch of Kavant Gram Panchayat. The District Development Officer, Vadodara in exercise of the powers under section 59(1) of the Gujarat Panchayat Act(hereinafter referred to as the Act) passed an order to suspend the petitioner as Deputy Sarpanch/Upsarpanch of Kavant Gram Panchayat on account of registration of criminal case against him by Kavant Police under CR-I 101/96.

3. Present appellant-petitioner had challenged the said order of suspension by filing SCA No. 3474/97. The learned single Judge found that the offence registered against the present petitioner was the offence punishable under section 409 of Indian Penal Code on the allegation that the petitioner had committed misappropriation of cement belonging to a public body. The learned advocate for the appellant-petitioner Ms. D.T.Shah has urged before us that the present petitioner had produced material before the District Development Officer to show that as a matter of fact there was no misappropriation of the cement in question and that there was utilization of the same by the Gram Panchayat. She urged the same even before the learned single Judge but he did not take said contention raised by her in consideration and in our opinion rightly so because if the provisions of section 59 of the Gujarat Panchayat Act are considered then it would be quite clear that at the time of considering the validity of the suspension order, the court has to see two things; viz. whether any criminal offence is registered against Deputy Sarpanch/Up Sarpanch and whether the offence registered against him is an offence of moral turpitude or not. The offence alleged against the present appellant-petitioner could not be said to be an offence not amounting to moral turpitude. The offence alleged against him is also alleged to have been committed while working as Deputy Sarpanch/Up Sarpanch. Therefore, in the circumstances the order of suspension passed by the District Development Officer, Vadodara could not be said to be illegal or improper. The question as regards the contention of the present petitioner as to whether said cement was misappropriated or not could be considered and decided at the trial itself. It is not possible for this court to go into the said disputed question of fact. The learned single had therefore, rightly rejected petition of the present

appellant petitioner and we do not find any illegality committed by him and therefore, there is no ground to interfere with the said order of the learned single Judge.

4. Learned counsel for the appellant urged before us that after the suspension of the petitioner, the respondent was not settled the agenda of the monthly meeting and he has not also informed about the monthly meeting. That would be a separate cause of action for making an appropriate claim . We would not make any observation regarding the same. Ms. Shah further urged that we should direct the learned Magistrate to dispose of the criminal trial as expeditiously as possible but no direction could be issued by us in this Letters Patent Appeal. It will be open to the petitioner to approach the learned Magistrate to consider expeditious trial of the present petitioner and he is at liberty to consider the same.

5. In the circumstances the Letters Patent Appeal deserves to be dismissed and the same is accordingly dismissed. No order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.J)